



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 20, 2024

Via electronic mail

[REDACTED]

RE: FOIA Request for Review – 2024 PAC 79991

Dear [REDACTED]:

This determination letter is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2022), as amended by Public Act 103-069, effective January 1, 2024). For the reasons set forth below, the Public Access Bureau concludes that your Request for Review is unfounded.

On January 19, 2024, you submitted a FOIA request to the Chicago Transit Authority (CTA) seeking a copy of the offer letter and any other accompanying documentation provided to prospective hires for positions organized within ATU 308. On January 26, 2024, CTA notified you that it was treating this request as one submitted by a recurrent requester, pursuant to section 2(g) (5 ILCS 140/2(g) (West 2022), as amended by Public Act 103-554, effective January 1, 2024) and section 3.2 of FOIA (5 ILCS 140/3.2 (West 2022)). CTA asserted that you met the definition of "recurrent requester" based on seven requests you had submitted in the four-day period from January 8 through January 11, 2024. On January 31, 2024, you submitted a Request for Review to this office contesting that designation. You stated that one of those seven requests, the request you submitted on January 10, 2024, and which CTA labeled as request 2024-0131, was submitted on behalf of a non-profit corporation rather than on your own behalf. You further explained that you had notified CTA of this fact after receiving CTA's recurrent requester designation, but that CTA did not allow you to amend your request.

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Section 2(g) of FOIA defines a "recurrent requester" as:

a person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period. For purposes of this definition, **requests made by news media and non-profit, scientific, or academic organizations shall not be considered in calculating the number of requests made in the time periods in this definition when the principal purpose of the requests is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.** (Emphasis added.)

Your Request for Review acknowledges that you transmitted to CTA from your e-mail account seven requests in seven days. At this office's request, CTA outlined the requests it received from you:

- FOIA 2024-0118, received 1/8/2024
- FOIA 2024-0120, received 1/9/2024
- FOIA 2024-0131, received 1/10/2024
- FOIA 2024-0134, received 1/11/2024
- FOIA 2024-0135, received 1/11/2024
- FOIA 2024-0136, received 1/11/2024
- FOIA 2024-0137, received 1/11/2024

CTA further explained that it also received request 2024-0163 from you on January 18, 2024, and then request 2024-0169 on January 19, 2024. As its initial response to request 2024-0169, CTA notified you that you met the definition of "recurrent requester" due to the requests you submitted between January 8 and January 11.

Your Request for Review states that you submitted request 2024-0131 at the request of a non-profit for its use rather than for your personal use. Request 2024-0131 seeks a log of employee Ventra card usage by 35 individuals in a two-year period. When you submitted Request 2024-0131, you described it in an e-mail to CTA as an amendment of request 2024-0106, which sought a log of employee Ventra card usage for 12 individuals, and which you had submitted on January 1, 2024, on your own behalf. As you note, FOIA request 2024-0131 does not indicate it was submitted on behalf of a non-profit. It also does not state that the principal

purpose of the request was one of the purposes outlined in section 2(g) of FOIA. On January 28, 2024, you sent CTA an e-mail stating that you submitted the request "on behalf of a non-profit, not *** as a private citizen. I didn't specify in the original request because that line was optional."¹ You did not, however, identify the not-for profit organization or the principal purpose of the request.

Section 2(g) of FOIA provides a limited exception to the definition of recurrent requester for certain organizations when the principal purpose of the request is one listed in that section. This office has previously determined that if a requester believes their request falls within the exception to section 2(g), the requester has an obligation to notify a public body that a request is being made by news media or by a non-profit, scientific, or academic organization. Ill. Att'y Gen. PAC Req. Rev. Ltr. 47422 47571 47800 48007 48008, issued July 21, 2017, at 3 (requester did not identify himself as news media in his requests); Ill. Att'y Gen. 77333, issued July 31, 2023, at 3 (request did not state that the individual submitting was news media or that the principal purpose of the request was among the three purposes excluded from section 2(g)). In order to qualify for the exception in section 2(g), request 2024-0131 not only needed to properly identify the organization submitting the request, but also needed to identify the principal purpose of the organization in submitting the request. According to the plain language of section 2(g), a request submitted by a non-profit shall not be considered in calculating the number of requests only when the principal purpose of the request is one of the three identified in that section. *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 73919, issued March 27, 2024, at 3 (construing the identical language in exception to definition of "voluminous request" and finding that statement that requester was a journalist for an identified media outlet and the request was submitted to gather information for news stories of public interest was sufficient to demonstrate the designation was improper).

Neither section 2(g) nor any other section of FOIA expressly affords a requester an opportunity to amend their request to provide this information when they failed to do so upon submission. Although it is understandable that a requester may make a mistake and may forget to notify the public body of this information, the public body nevertheless must be able to rely on the information it possesses at the time it designates a request as a request submitted by a recurrent requester. Classifying a requester as recurrent provides the public body with a significant amount of additional time to respond to a request.² If CTA had been required to accept your amendment concerning request 2024-0131, and withdraw its designation of you as a

¹E-mail from [REDACTED] to Haley [Lowrance] (January 28, 2024).

²See 5 ILCS 140/3.2(a) (West 2022) ("Notwithstanding any provision of this Act to the contrary, a public body shall respond to a request from a recurrent requester, as defined in subsection (g) of Section 2, within 21 business days after receipt.").

recurrent requester, its response to 2024-0169 would have become untimely. Given the statutory consequences associated with an untimely response to a FOIA request, this office cannot compel CTA to accept a subsequent amendment about the identity of the requester in 2024-0131.

Accordingly, because this office is unable to conclude that CTA violated FOIA by considering request 2024-0131 in calculating the number of requests submitted by you in seven days for purposes of section 2(g) of FOIA, this office concludes that your Request for Review is unfounded.

This letter shall serve to close this matter. If you have questions, please contact me at leah.bartelt@ilag.gov.

Very truly yours,

[REDACTED]
LEAH BARTEL
Public Access Counselor
Public Access Bureau

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